

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MDL No. 3076
CASE NO. 1:23-md-03076-KMM**

IN RE:

FTX Cryptocurrency Exchange Collapse Litigation

THIS DOCUMENT RELATES TO ALL ACTIONS

**PLAINTIFFS' PRELIMINARY REPORT
IN ADVANCE OF INITIAL STATUS CONFERENCE**

Pursuant to this Court’s June 7, 2023 Order Setting Initial Conference, [ECF No. 7] (“Order”), ¶ 2, Undersigned Plaintiffs’ Counsel have conducted numerous meetings (via Zoom) and numerous telephone calls and very productive and cooperative sessions. As a result of the meetings, exchange of drafts, and coordination with all counsel, Plaintiffs submit the following Preliminary Report on the “facts involved in the litigation and the critical factual and legal issues” (*id.*) that will require the Court’s and the Parties’ attention. In addition, Plaintiffs attach Lists of Affiliated Companies and Counsel (**Exhibit A**), Pending Motions (**Exhibit B**), Related Cases (**Exhibit C**), and, for the Court’s convenience, a Comprehensive Service List (**Exhibit D**). Now that the Judicial Panel for Multidistrict Litigation (“JPML”) granted Plaintiffs’ petition and centralized these actions¹ before this Court, Plaintiffs respectfully submit the Court can organize these cases in an effective manner, conserving the resources of the Court, the Parties and Counsel.

I. FACTUAL AND PROCEDURAL BACKGROUND

In November 2022, the cryptocurrency exchange platform “FTX” suddenly collapsed. Valued at \$32 billion, FTX and its affiliated companies saw their valuation plummet to almost nothing over the span of a mere ten days, and on November 11, 2022, filed for Chapter 11 bankruptcy protection. Numerous class and non-class actions arose as a result of the calamitous downfall of FTX, principally alleging fraudulent and conspiratorial conduct with regard to the promotion, marketing, auditing, and misappropriation of funds for the FTX platform.

The first-class action against FTX was filed before this Court two (2) business days after it was revealed that FTX operated as an alleged fraudulent scheme and sought emergency

¹ MDL Petitioners and all Parties agreed, and thus the JPML did not “include the claims against Signature Bank and the Silvergate Bank defendants” in its transfer order. *In re: FTX Cryptocurrency Exch. Collapse Litig.*, 1:23-md-03076-KMM, ECF No. 1 (“Transfer Order”), 3.

bankruptcy relief.² Extensive expert testimony was presented and all Defendants in *Garrison* were served. Since *Garrison*, additional cases have been filed, including state and federal actions, mainly in Florida and California,³ against various defendants from the FTX collapse, including accountants, venture capital funds, law firms and FTX insiders⁴ On May 12, 2023, this Court granted *Garrison* Plaintiffs leave to file a 327-page Amended Complaint, [ECF No. 205], which included significant substantive amendments, including newly uncovered information evidencing how FTX's Miami office served as the epicenter for most of the FTX domestic dealings with 3rd parties, as well as adding new parties and new expert analysis.⁵ On June 5, 2023, the JPML entered the Transfer Order as the Related Actions “*arise from a common factual core.*” See Trans. Order, 2.⁶

² *Garrison v. Bankman-Fried, et al.*, No. 1:22-cv-23753-KMM, ECF No. 192 (S.D. Fla.).

³ One case was filed in the District of New Jersey (*Lucky D v. Prager Metis, LLP, et al.*, No. 23-389).

⁴ On February 14, 2023, Plaintiff Patrick Rabbitte filed the first case against certain venture capital and private equity backers of FTX, Sequoia Capital Operations, LLC, Thoma Bravo, LP and Paradigm Operations LP (“Venture Capital Defendants”) in the Northern District of California. On March 24, 2023, Judge Corley consolidated cases against the Venture Capital Defendants and appointed Robbins Geller Rudman & Dowd LLP as Interim Lead Class Counsel for those consolidated proceedings. See *In re FTX Investors Sequoia Capital Litig.*, No. 4:23-cv-00655-JSC, ECF No. 43 (N.D. Cal. Mar. 24, 2023).

⁵ In addition, a case entitled *Paffrath*, No. 23-cv-21023, was filed as a class action against the largest FTX YouTube Influencer/Promoters. Plaintiffs obtained in *Paffrath* an order authorizing alternate service on international Defendants, [ECF No. 65], a comprehensive Case Management Order, [ECF No. 70], and Orders on jurisdictional discovery, which was in process when the JPML entered its Transfer Order. [ECF Nos. 88, 93]. On June 1, 2023, the Court stayed claims as to Defendant Kevin Paffrath pending approval of a proposed class settlement and potentially settlements with other Defendants. [ECF No. 112]. Similarly, a class action was filed in this Court against venture capital firms, banks, law firms and accounting firms. *O’Keefe, et al., v. Sequoia Capital Operations, LLC, et al.*, 1:23-cv-20700 (S.D. Fla.).

⁶ Some of the cases in California had the benefit of a formal Initial Case Management Conference (“CMC”) Statement filed with significant input from not only plaintiffs but also from defendants. See *Lam v. Bankman-Fried, et al.*, No. 3:22-cv-07336-JSC, ECF No. 60 (N.D. Cal.).

As the JPML noted in the Transfer Order, Defendant Daniel Friedberg, former Chief Compliance Officer of FTX, filed a Declaration with the *Garrison* Amended Complaint, explaining a soon-to-be proposed Class-wide Settlement, whereby he agrees to provide significant cooperation and information to Plaintiffs regarding different FTX Defendants and Insiders, and provides factual information, such as facts illustrating the strong connection between FTX's Miami office and many of the aiders and abettors.⁷ On June 13, 2023, the *Lucky D* plaintiffs filed before the JPML a notice of opposition to the conditional transfer order. *See* MDL 3076, ECF No. 142.

II. CRITICAL FACTUAL & LEGAL ISSUES

One of the first legal issues the Court will face concerns the appointment of Plaintiffs' lead counsel and organizing a leadership structure (the Court may also consider appointing a Defendants' Liaison Counsel). *Fed. Judicial Ctr., Manual for Complex Litigation* (4th ed. 2004) ("*Manual*"), § 10.22. Establishing a structure now to clarify the duties and responsibilities of Plaintiffs' counsel will help avoid issues associated with duplication of effort and wasting the time and resources of the parties and the Court. *Id.*

As the JPML confirmed, there are both substantial issues that overlap among the various claims against various defendants, and there are substantial issues that are specific to particular claims against particular defendants. Undersigned Counsel believe, subject to the Court's view, of course, that an overall structure managed by Co-Lead Counsel and a Plaintiffs' Steering Committee, will provide the most efficient and effective representation of the class. *See, e.g., Manual* § 10.221.

⁷ As noted in the JPML Transfer Order, "a significant part of FTX's conduct allegedly emanated from this District." *See* Transfer Order, 3.

Once Leadership is appointed, Plaintiffs believe that the key factual and legal issues likely faced by the parties include the following fourteen (14) items: :

- (1) negotiations with defendants on several initial agreements that would facilitate the early exchange of information such as available insurance;
- (2) a confidentiality protective order, ESI protocol, and a privilege log protocol;
- (3) preliminary and final approval of proposed settlements with certain Defendants;
- (4) preparation and filing of a Consolidated Complaint(s);
- (5) coordination/monitor FTX cases in the bankruptcy and criminal courts, both foreign and domestic;
- (6) whether this Court, now as an “MDL Transferee Court” with additional powers, has jurisdiction over all of the named Defendants;
- (7) whether certain class representative plaintiffs have standing to pursue claims against certain defendants and to support various state and federal claims;
- (8) whether discovery should be staged and/or bifurcated in any manner;
- (9) whether FTX and/or its executives operated the FTX Platform as a Ponzi scheme and/or committed other, related misconduct;
- (10) whether certain Defendants provided substantial assistance to FTX and/or its executives, in connection with any alleged misconduct;
- (11) the extent of liability for the named professionals, such as the accountants, law firms and venture capital funds;
- (12) whether the FTX Platform, FTT token, and/or the FTX Yield Bearing Accounts meet the applicable requirements to be considered “securities,” including under the *Howey* and/or *Reves* tests,
- (13) whether the FTX Exchange can, and should be liable for offering or selling other (non FTT) crypto assets, and whether those sales were the sale of unregistered securities; and
- (14) whether class treatment is appropriate under Fed. R. Civ. P. 23, for any of the proposed issue and/or class certifications.

Dated: June 16, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2023, I electronically served the foregoing with the Clerk of Court using the CM/ECF System which will send an electronic notification of such filing to all counsel of record in the Court's ECF filing system and via email or mail to counsel listed in the master service list attached as Exhibit D.

/s/ Adam M. Moskowitz
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